

CRR-1407 of 2016 (O&M)

In the High Court of Punjab and Haryana at Chandigarh

CRR-1407 of 2016(O&M)
Date of Decision:25.5.2017

Manish

---Petitioner

vs.

State of Haryana

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vikram Singh, Advocate
for the petitioner

Mr. Vikas Malik, DAG, Haryana

Rekha Mittal, J.

The present petition directs challenge against judgments dated 23.3.2016 passed by the Additional Sessions Judge, Panipat and dated 17/18.03.2015 by the Juvenile Justice Board, Panipat (hereinafter referred to as “the Board”) whereby the petitioner was held guilty of committing offence under Sections 328, 363, 366A, 376(2)(g), 506 read with Section 34 of the Indian Penal Code (in short “IPC”) by the Board and appeal preferred by the petitioner came to be dismissed by the first appellate court.

Counsel for the petitioner has assailed the consistent findings recorded by the courts below on few counts. The first submission made by counsel is that there is unexplained delay of 8 days in lodging the FIR registered on 3.4.2012 but as per case of the prosecution, occurrence took

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place on the intervening night of 24/25-3-2012 at about 2-00 a.m. Another submission made by counsel is that as per story of the prosecution, the prosecutrix narrated the occurrence to her mother but the mother has not been examined as a witness. The investigating officer was also not examined in the case. Father of the prosecutrix was examined but his testimony is a mere hearsay, therefore, not sufficient to corroborate version of the prosecutrix. No injury was found on person of the prosecutrix as per medical examination, that creates a doubt in her version that she was forcibly subject to rape by the petitioner. It is further argued that even report of the Forensic Science Laboratory does not corroborate version of the prosecutrix as no semen or spermatozoa was found on the samples sent for analysis. In addition, it is argued that four persons namely Pankaj, Pardeep, Vikas and the petitioner faced trial but all other accused were acquitted by the appellate court.

Counsel representing State of Haryana has supported the judgments passed by the courts below with the submission that in view of limited scope of intervention in exercise of revisional jurisdiction, neither it is open for the Court to re-appraise or re-evaluate the evidence adduced by the prosecution nor if two views are possible on the basis of evidence on record, consistent findings recorded by the courts below are liable to be interfered. It is argued that counsel for the petitioner has not pointed out any patent error much less illegality in the judgments of the courts below. Delay in lodging the FIR assumes no significance in cases involving sexual assault as family of the victim always remain apprehensive that making the crime public may be of serious consequence for the victim more particularly

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in the circumstances of the present case that the prosecutrix was less than 16 years of age. Non-presence of injury on person of the prosecutrix is of no relevance as the prosecutrix was less than 16 years of age when otherwise she was medically examined several days after the occurrence. Non examination of mother of the prosecutrix or the investigating officer would not enure to benefit of the petitioner once testimony of the prosecutrix inspires confidence and worthy of credence and reliance. There would be no possibility of any semen or spermatozoa being present on the samples because of lapse of time between the date of occurrence and medical examination of the victim.

I have heard counsel for the parties, perused the paper book particularly the judgments passed by the courts below.

Before adverting to the submissions made by counsel for the parties, it is pertinent to mention here that it is not within the ambit of revisional jurisdiction to re-appreciate the evidence in order to find out if findings recorded by the courts below are correct or otherwise. Counsel for the petitioner has not advanced any arguments to point out any fault or lacunae in testimony of the prosecutrix, a girl less than 16 years of age who was subject to cross examination at length by an Advocate representing the petitioner. There is no material on record to prove that the prosecutrix had any reason much less a strong motive to indict the petitioner if no such occurrence had actually taken place. Counsel for the petitioner has failed to spell out any discrepancy in the case of the prosecution in order to say that testimony of prosecutrix alone cannot form the basis for recording conviction of the petitioner.

The plea with regard to delay in lodging of FIR is not at all sufficient to reverse the findings of conviction. It has been repeatedly held by the courts that delay itself is not a ground for acquittal of the accused unless it is proved that delay has been used to concoct a version after due deliberation or implicating large number of persons. Equally settled is that delay cannot be taken seriously in cases involving sexual assault as family of the victim always feel reluctant to make the crime public, fearing wrath of society and social stigma. In view of the above, non examination of mother and the investigating officer can not enure to benefit of the petitioner. Similarly, acquittal of the co-accused by the appellate court cannot be a ground to hold in favour of the petitioner particularly that the main act of committing rape has been attributed to the petitioner only.

Another aspect of the matter that the prosecutrix did not sustain an injury loses its importance from legal and factual perspective. The prosecutrix was less than 16 years of age, therefore, consent on her part is not relevant. Even otherwise, the accused has not raised a plea that she was a consenting party. This apart, the prosecutrix was medically examined eight/nine days after the occurrence. Non presence of spermatozoa in the samples itself is not a ground to negate story of the victim of sexual assault that stands at par with an injured witness. As the victim was medico legally examined after a lapse of time, possibility of presence of spermatozoa on the samples is otherwise ruled out in view of life span of spermatozoa. In view of the above, I do not find any illegality in the findings recorded by the courts below holdings the petitioner guilty of offence charged against him.

In view of what has been discussed hereinabove, finding no

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merit, the petition fails and is accordingly dismissed.

(Rekha Mittal)
Judge

25.5.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No